Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

No. 77-604

# In the Supreme Court of the United States

OCTOBER TERM, 1977

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A. J. WHITE & CO.,
ALLEN J. WHITE, PETITIONERS

*v.*

SECURITIES AND EXCHANGE COMMISSION

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT*

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## MEMORANDUM FOR THE SECURITIES AND EXCHANGE COMMISSION IN OPPOSITION

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WADE H. MCCREE, JR.,
*Solicitor General,*
*Department of Justice,*
*Washington, D.C. 20530.*

DAVID FERBER,
*Solicitor to the Commission,*
*Securities and Exchange Commission,*
*Washington, D.C. 20549.*

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The petition for a writ of certiorari was filed out of time. The judgment of the court of appeals in this civil case was entered on June 15, 1977. The time for filing a petition for a writ of certiorari was not extended and, accordingly, the 90-day period for petitioning provided in 28 U.S.C. 2101(c) expired on September 13, 1977. The petition was filed on September 15, 1977.

The time limit imposed by 28 U.S.C. 2101(c) is jurisdictional. *Toledo Scale Co.* v. *Computing Scale Co.*, 261 U.S. 399, 417-418. Accordingly, the petition should be denied.

Respectfully submitted.

WADE H. MCCREE, JR.,
*Solicitor General.*

DAVID FERBER,
*Solicitor to the Commission,*
*Securities and Exchange Commission.*

NOVEMBER 1977.

DOJ-1977-11